

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of INNOCENCE CHAPMAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONALD ALLEN CHAPMAN,

Respondent-Appellant,

and

DARDEDA GORDON and BOBBY TILLERY,

Respondents.

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Respondent-appellant appeals from an order terminating his parental rights to the minor child. We dismiss this appeal as moot because it does not appear that respondent has any parental rights to terminate.

The lower court record reflects that the minor child's mother was married to respondent Tillery at the time of the conception and birth of the child, though they were apparently separated. Although it appears undisputed amongst the parties that respondent Chapman is the biological father of the child, we were unable to find any indication in the lower court record that it has ever been determined that Tillery is not the legal father of the child. Indeed, in the same order that purports to terminate Chapman's parental rights, Tillery's parental rights are terminated as well.

As the Supreme Court clearly stated in *In re KH*, 469 Mich 621, 624; 677 NW2d 800 (2004), "where a legal father exists, a biological father cannot properly be considered even a putative father." Furthermore, there is a rebuttable presumption that a child born or conceived during a marriage is the legitimate issue of the marriage. *Id.* at 624-625. And unless "and until the presumption of legitimacy is rebutted in a prior proceeding, an alleged biological father

cannot seek a determination that he is the natural father of the child. . . . The Family Independence Agency erred by naming multiple men in the termination petition where a legal father existed.” *Id.* at 625.

Thus, although, according to the record, respondent Chapman filed an affidavit of paternity and the paperwork necessary to add his name to the child’s birth certificate, that had no effectiveness unless it had first been determined that the legal father, the mother’s husband, was not in fact the father of the child. There is no indication in the record that it had been determined that Tillery was not the child’s father and the termination of Tillery’s parental rights would be inconsistent with such a determination. Accordingly, based upon the record before us, we can only conclude that respondent Chapman had no parental rights to terminate in the first place. Therefore, this appeal is moot.

Dismissed as moot.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O’Connell